IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 6388 OF 1998(I)

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PETITIONER:

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TRIKKANDIYOOR PRODUCERS CUM
CONSUMERS CO-OPERATIVE MARKETING SOCIETY
REPRESENTED BY SECRETARY, MOHAMMED ALI.

BY ADV. SRI.M.VIJAYAKUMAR
SRI.M.RAMESH CHANDER

RESPONDENTS:

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1. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF FINANCE, GOVERNMENT OF INDIA.

2. THE COMMISSIONER OF CENTRAL EXCISE,
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD,
COCHIN-18.

BY ADV. SRI.K.RAMAKUMAR, SCGSC

GOVT. PLEADER SRI. C.M. KAMAPPU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**O.P. 6388/1998**

ORDER ON CMP NO. 11388/1998 IN O.P. NO. 6388/1998

// DISMISSED //

22ND NOVEMBER, 2007. SD/-
P.R. RAMAN, JUDGE.

**APPENDIX**

**PETITIONER'S EXHIBITS:**

EXT.P1 TRUE COPY OF THE NOTIFICATION NO. 41/97 DATED 5.11.1997

EXT.P2 TRUE COPY OF THE NOTIFICATION NO. 42/97 DATED 5.11.1997.
EXT.P3 TRUE COPY OF THE NOTIFICATION NO. 43/1997 DATED 5.11.1997.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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O.P. NO. 6388 OF 1998

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DATED THIS, THE 22ND DAY OF NOVEMBER, 2007.

J U D G M E N T

The challenge is against Ext.P2, a notification issued by the Government of India, by which service tax rules were amended in exercise of the powers conferred by Section 94 of the Finance Act, 1994 and inserted the following clause:

> "(xvii). in relation to services provided by a goods transport operator, every person who pays or is liable to pay the freight either himself or through his agent for the transportation of goods by road in a goods carriage."

2. Petitioner contends that this notification is contrary to the provisions of Section 66(3) and 68 of the Finance Act, 1997. It is also contended that when various other institutions like factories registered under the Factories Act etc. are exempted from payment of service tax, Co-operative Societies are not given any such benefit and therefore, it is discriminatory.

3. Except to challenge the rule as aforesaid, petitioner has not produced any material to show that there was any proceeding by the

respondent to recover service tax from the petitioner.

In these circumstances, the original petition is dismissed without prejudice to the right of the petitioner to challenge Ext.P2 notification in appropriate proceeding, if and when an occasion arises and if the petitioner is called upon to pay any service tax.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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O.P. NO. 6388 OF 1998
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J U D G M E N T
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22ND NOVEMBER, 2007.